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The Associated Students of the University of Montana
Resolution Expanding Impeachable Offences to Specify and Reflect the Montana Code Annotated
April 13, 2019
SB56-18/19
Authored by: Danielle Pease, ASUM Senator;
Sponsored by:

Whereas, The University of Montana Student Code of Conduct clearly defines that,

The following acts are prohibited and are violations of the Student Conduct Code:

- 1. Forgery, falsification, or fraudulent misuse of University documents, records, or identification cards.*
- 2. Providing false information to the University or to members of the University community acting in the performance of their official duties.*
- 3. Causing false information to be presented before any University disciplinary proceeding or intentionally destroying evidence important to such a proceeding.*
- 4. Theft of property or services on University premises or at University-sponsored activities, or knowing possession of stolen property on University premises or at University-sponsored activities.*
- 5. Unauthorized use, destruction, or damage of University property or the property of others on University premises or at University-sponsored activities.*
- 6. Unauthorized or illegal use of the University's facilities, telephone system, mail system, computers, or computer network, or use of any of the above for any illegal act.*
- 7. Unauthorized entry, use, or occupancy of University facilities.*
- 8. Failure to comply with the directions of University officials, including Resident Assistants, University Police Officers, and the Student Conduct Officer, acting in the performance of their duties and within the scope of their authority.*
- 9. Violation of published University regulations, rules, or policies.*
- 10. Intentional obstruction or disruption of normal University or University-sponsored activities, including but not limited to studying, teaching, research, administration, disciplinary proceedings, or fire, police, or emergency services.*
- 11. Use, possession, or distribution of alcoholic beverages on University premises or at University-sponsored activities except as permitted by University policies (see University of Montana facility use policies and University of Montana alcohol and drug policies).*
- 12. Disorderly or indecent conduct on University-owned or -controlled property or at University-sponsored activities.*
- 13. Interfering with the freedom of expression of others on University premises or at University-sponsored activities.*
- 14. Hazing, defined as an act which endangers the mental or physical health or safety of another, or which destroys or removes public or private property, for the purpose of initiation, admission into, affiliation with, or as a condition for continued membership in a group or organization.*
- 15. Malicious intimidation or harassment of another. When a student, with the intent to terrify, intimidate, threaten, or harass (1) causes bodily injury to another, (2) causes reasonable apprehension of bodily injury in another, (3) damages, destroys, or defaces any property of another or any public property, or (4) makes repeated, persistent and/or severe communications, including telephone, digital, or electronic communications, that are unwelcome to the receiver.*
- 16. Illegal use, possession, or distribution of any controlled substance on University premises or at University-sponsored activities.*
- 17. Illegal distribution of any controlled substance off-campus, subject to the provisions in Section II, "Jurisdiction of the University of Montana."*

- 50 18. *Illegal or unauthorized possession or use of firearms, explosives, other weapons, dangerous*
51 *chemicals, or noxious substances on University premises or at University-sponsored activities.*
52 19. *Homicide, assault, aggravated or felony assault, or threat of the same.*
53 20. *Conduct that recklessly or otherwise threatens or endangers the health or safety of another person.*
54 21. *Retaliation against a person for filing a complaint and/or acts of intimidation directed towards the*
55 *person to drop a complaint, including involvement in third- party retaliation or intimidation.*
56 22. *Violation of the terms of any disciplinary sanction imposed in accordance with the Student Conduct*
57 *Code;*

58
59 Whereas, The University of Montana Discrimination, Harassment, Stalking, and Retaliation policy clearly
60 defines sexual misconduct as,

- 61
62 1. *Sexual Misconduct includes sexual assault, inducing incapacitation for sexual purposes, and*
63 *sexual exploitation. [2]*
64 2. *Sexual Assault means an actual or attempted sexual contact with another person without that*
65 *person's consent. Sexual assault includes, but is not limited to:*
66 a. *Involvement in any sexual contact when the victim is unable to consent.*
67 b. *Intentional and unwelcome touching of, or coercing, forcing, or attempting to coerce or force*
68 *another to touch a person's intimate parts (defined as genital area, groin, inner thigh, buttocks,*
69 *or breast).*
70 c. *Sexual intercourse without consent, including acts commonly referred to as "rape."*
71 i. *Consent is informed, freely given, and mutual. If coercion,*
72 *intimidation, threats, or physical force are used there is no consent. If a person is mentally or*
73 *physically incapacitated or impaired so that such person cannot understand the fact, nature or*
74 *extent of the sexual situation, there is no consent; this includes impairment or incapacitation due*
75 *to alcohol or drug consumption, or being asleep or unconscious. There is no consent when there*
76 *is force, expressed or implied, or use of duress or deception upon the victim. Silence does not*
77 *necessarily constitute consent. Past consent to sexual activities does not imply ongoing future*
78 *consent. Whether an individual has taken advantage of a position of influence over an alleged*
79 *victim may be a factor in determining consent.*
80 ii. *Inducing incapacitation for sexual purposes includes using drugs,*
81 *alcohol, or other means with the intent to affect or having an actual effect on the ability of an*
82 *individual to consent or refuse to consent (as "consent" is defined in this policy) to sexual*
83 *contact.*
84 3. *Sexual Exploitation occurs when a person takes non-consensual or abusive sexual advantage*
85 *of another for anyone's advantage or benefit other than the person being exploited, and that*
86 *behavior does not otherwise constitute one of the preceding sexual misconduct*
87 *offenses. Examples of behavior that could rise to the level of sexual exploitation include:*
88 a. *Prostituting another person;*
89 b. *Non-consensual visual (e.g., video, photograph) or audio-recording of sexual activity;*
90 c. *Non-consensual distribution of photos, other images, or information of an individual's sexual*
91 *activity, intimate body parts, or nakedness, with the intent to or having the effect of embarrassing*
92 *an individual who is the subject of such images or information;*
93 d. *Going beyond the bounds of consent (such as letting your friends hide in the closet to watch*
94 *you having consensual sex);*
95 e. *Engaging in non-consensual voyeurism;*
96 f. *Knowingly transmitting an STI, such as HIV, to another without disclosing your STI status;*
97 g. *Exposing one's genitals in non-consensual circumstances, or inducing another to expose his*
98 *or her genitals;*
99 h. *Possessing, distributing, viewing or forcing others to view illegal pornography;*

4. *Relationship Violence is abuse or violence between partners or former partners involving one or more of the following elements:*

- a. Battering that causes bodily injury;*
- b. Purposely or knowingly causing reasonable apprehension of bodily injury;*
- c. Emotional abuse creating apprehension of bodily injury or property damage;*
- d. Repeated telephonic, electronic, or other forms of communication -- anonymously or directly -- made with the intent to intimidate, terrify, harass, or threaten;*

5. *Retaliation is action taken by an accused individual or an action taken by a third party against any person because that person has opposed any practices forbidden under this policy or because that person has filed a complaint, testified, assisted, or participated in any manner in an investigation or proceeding under this policy. This includes action taken against a bystander who intervened to stop or attempt to stop discrimination, harassment, or sexual misconduct. Retaliation includes intimidating, threatening, coercing, or in any way discriminating against an individual because of the individual's complaint or participation. Action is generally deemed retaliatory if it would deter a reasonable person in the same circumstances from opposing practices prohibited by this policy;*

Whereas, The University of Montana is at times cited for failing to adequately respond to reports of sexual assault^[1], sexual intercourse without consent^[2], aggravated assault^[3], intimidation^[4], partner or family member assault^[5], assault with a weapon^[6], violation of order of protection^[1] ^[7], all perjury and other falsification in official matters crimes^[8], violations of Title IX, and the Montana Human Rights Act;^[9]

Whereas, The Associated Students of the University of Montana further recognize the role of MCA 45-5-501,

(1) (a) As used in 45-5-503, the term "without consent" means:

(i) the victim is compelled to submit by force against the victim or another; or
(ii) subject to subsections (1)(b) and (1)(c), the victim is incapable of consent because the victim is:

- (A) mentally disordered or incapacitated;
- (B) physically helpless;
- (C) overcome by deception, coercion, or surprise;
- (D) less than 16 years old;

(E) incarcerated in an adult or juvenile correctional, detention, or treatment facility or is on probation or parole and the perpetrator is an employee, contractor, or volunteer of the supervising authority and has supervisory or disciplinary authority over the victim, unless the act is part of a lawful search;

(F) receiving services from a youth care facility, as defined in 52-2-602, and the perpetrator:

(I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(II) is an employee, contractor, or volunteer of the youth care facility; or

(G) admitted to a mental health facility, as defined in 53-21-102, is admitted to a community-based facility or a residential facility, as those terms are defined in 53-20-102, or is receiving community-based services, as defined in 53-20-102, and the perpetrator:

(I) has supervisory or disciplinary authority over the victim or is providing treatment to the victim; and

(II) is an employee, contractor, or volunteer of the facility or community-based service;

Whereas, The Associated Students of the University of Montana commend the state of Montana for their current definition of sexual intercourse without consent to reflect that Montana is “one of the eight states that defines rape in its broadest reach as sex without the consent of another”;^[10]

Whereas, The impact on the campus community and student relations of crimes against persons differs from those not identified in this category,

Whereas, The Associated Students of the University of Montana recognize the fundamental rights of due process of law;

Whereas, The Associated Students of the University of Montana recognize the fundamental rights of each individual on campus to have access to higher education without fear of retaliation, intimidation, violence, or threats of such actions;

Whereas, The Associated Students of the University of Montana recognize that current campus policies fail to mirror with Montana Code Annotated;

Whereas the Associated Students of the University of Montana additionally recognize that Federal Title IX policy functions under a different set of definitions^[11] and changes based on guidance of President’s recommendations and appointments^[12];

Whereas, The Associated Students of the University of Montana seek to maintain a fluid definition with the Montana Code Annotated to respect the above recognitions,

Whereas, Current Associated Students of the University of Montana House Rules read,

A. Any officer or member of the Senate may be impeached for:

- 1. breach of duties as stated in the Constitution or Bylaws;*
- 2. failing to attend three regularly scheduled Senate meetings (and/or ASUM committee meetings), per semester, without an excuse approved by the chair (Vice President);*
- 3. missing final budgeting without being excused by the Chair;*
- 4. committing any misdemeanor or felony upon conviction in open court;*
- 5. committing any larceny against the University, ASUM, or any subsidiary thereof;*

Therefore, Let It Be Further Resolved, That the Associated Students of the University of Montana recognize the danger of allowing individuals to serve as senators, whom have acted in an inchoate or consummated matter against individuals in the student body;

Therefore, Let It Be Further Resolved, That Article II Section 3 of ASUM Bylaws be established and titled “Impeachable Offenses.”

Therefore, Let It Be Further Resolved, That the Associated Students of the University of Montana add the following language to the bylaws adding Article II Section 3 to read:

- 191 • Any officer of the Senate may be impeached for:

- 192
- 193 1. Breach of duties as stated in the Constitution or Bylaws;
- 194 2. Failing to attend three regularly scheduled Senate meetings (and/or ASUM committee
- 195 meetings), per semester, without an excuse approved by the chair (Vice President);
- 196 3. Missing final budgeting without being excused by the Chair;
- 197 4. Upon conviction, entering a plea of guilty or nolo contendere, of any of the following in a
- 198 court of law, including federal and state;
- 199 i. Felony sex offense or third offense of partner or family member assault,
- 200 ii. Homicide, assault, aggravated or felony assault, or threat of the same,
- 201 iii. Any crime classified as a felony crime against a person as defined in Montana Code
- 202 Annotated,;
- 203 iv. Any crime classified as a felony crime against a person in any state or territory belonging to
- 204 the United States, including the District of Columbia,
- 205 v. Any crime in the United States Code, Title 18, Part 1.
- 206 a. The Senate must be provided any and all available, non-confidential, criminal justice
- 207 information related to the offense.
- 208 b. All information provided to Senators must also be available to any student who seeks the
- 209 information through the proper party.
- 210 5. Upon conviction, guilty plea, or nolo contendere plea of a misdemeanor sex offense or first/
- 211 second offense partner or family member assault,
- 212 6. Upon conviction or guilty plea of a felony or misdemeanor (not enumerated above) defined
- 213 in the Montana Code Annotated.
- 214 7. Retaliation against a person for filing a complaint and/or acts of intimidation directed
- 215 towards the person to drop a complaint, including involvement in third- party retaliation or
- 216 intimidation.
- 217 8. Committing any larceny against the University, ASUM, or any subsidiary thereof.`
- 218

219 **Therefore, Let It Be Further Resolved, That Article III Section 3 of the ASUM Bylaws be**

220 **established and titled “Impeachable Offenses.”**

221

222 **Therefore, Let It Be Further Resolved, That the Associated Students of the University of Montana**

223 **add the following language to the bylaws adding Article III Section 3 to read:**

224

- 225 g. Any member of the Senate may be impeached for:

- 226 1. Breach of duties as stated in the Constitution or Bylaws;

2. *Failing to attend three regularly scheduled Senate meetings (and/or ASUM committee meetings), per semester, without an excuse approved by the chair (Vice President);*
3. *Missing final budgeting without being excused by the Chair;*
4. *Upon conviction, entering a plea of guilty or nolo contendere, of any of the following in a court of law, including federal, state, and tribal court;*
- i. *Felony sex offense or third offense of partner or family member assault,*
 - ii. *Homicide, assault, aggravated or felony assault, or threat of the same,*
 - iii. *Any crime classified as a felony crime against a person as defined in Montana Code Annotated,;*
 - iv. *Any crime classified as a felony crime against a person in any state or territory belonging to the United States, including the District of Columbia,*
 - v. *Any crime in the United States Code, Title 18, Part 1.*
- a. *The Senate must be provided any and all available, non-confidential, criminal justice information related to the offense.*
 - b. *All information provided to Senators must also be available to any student who seeks the information through the proper party.*
5. *Upon conviction, guilty plea, or nolo contendere plea of a misdemeanor sex offense or first/second offense partner or family member assault,*
6. *Upon conviction or guilty plea of a felony or misdemeanor (not enumerated above) defined in the Montana Code Annotated.*
7. *Retaliation against a person for filing a complaint and/or acts of intimidation directed towards the person to drop a complaint, including involvement in third- party retaliation or intimidation.*
8. *Committing any larceny against the University, ASUM, or any subsidiary thereof.`*

Passed by Committee: _____, 2019

Passed by ASUM Senate: _____, 2019

Ethan Hanley,
Chair of the Relations and Affairs Committee

Mariah Welch,
Chair of the Senate

[1] MCA 45-5-502: (1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

[2] MCA 45-5-503: (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of the person's spouse, as provided in 45-5-501(1)(a)(ii)(D). The Associated Students of the University of Montana also explicitly note the application of "(3) (a) If the victim is less than 16 years old and the offender is 4 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, the offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 4 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222. (b) If two or more persons are convicted of sexual intercourse without consent with the same victim in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense, each offender shall be punished by life imprisonment or by imprisonment in the state prison for a term of not less than 5 years or more than 100 years and may be fined not more than \$50,000, except as provided in 46-18-219 and 46-18-222".

[3] MCA 45-5-202: (1) A person commits the offense of aggravated assault if the person purposely or knowingly causes serious bodily injury to another or purposely or knowingly, with the use of physical force or contact, causes reasonable apprehension of serious bodily injury or death in another.

[4] MCA 45-203: (1) A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, the person communicates to another, under circumstances that reasonably tend to produce a fear that it will be carried out, a threat to perform without lawful authority any of the following acts:

(a) inflict physical harm on the person threatened or any other person;

(b) subject any person to physical confinement or restraint; or

(c) commit any felony.

(2) A person commits the offense of intimidation if the person knowingly communicates a threat or false report of a pending fire, explosion, or disaster that would endanger life or property.

[5] MCA 45-5-206 "(1) A person commits the offense of partner or family member assault if the person:

(a) purposely or knowingly causes bodily injury to a partner or family member;

(b) negligently causes bodily injury to a partner or family member with a weapon; or

(c) purposely or knowingly causes reasonable apprehension of bodily injury in a partner or family member.

[6] (1) A person commits the offense of assault with a weapon if the person purposely or knowingly causes:

(a) bodily injury to another with a weapon; or

(b) reasonable apprehension of serious bodily injury in another by use of a weapon or what reasonably appears to be a weapon.

[7] **MCA 45-5-626** (1) A person commits the offense of violation of an order of protection if the person, with knowledge of the order, purposely or knowingly violates a provision of any order provided for in 40-4-121 or an order of protection under Title 40, chapter 15. It may be inferred that the defendant had knowledge of an order at the time of an offense if the defendant had been served with the order before the time of the offense. Service of the order is not required upon a showing that the defendant had knowledge of the order and its content.

(2) Only the respondent under an order of protection may be cited for a violation of the order. The petitioner who filed for an order of protection may not be cited for a violation of that order of protection.

[8] Let this cover all forms of perjury and other falsification in official matters crimes as defined in MCA 45-7-2

[9] MCA 49-1

[10] Hong, Kari. 2018. "A New Mens Rea for Rape: More Convictions and Less Punishment." *American Criminal Law Review* 55 (2): 259. <https://search.proquest.com/docview/2084454699>.

[11] See University of Montana Discrimination Policy

See The Resolution Agreement University of Montana and Department of Education (2013)

[12] See 2011 Office of Civil Rights Dear Colleague Letter

See 2017 Office of Civil Rights Rollback Guidelines

DRAFT